

The provisions of Section 2d of the Retailers' Occupation Tax require "any person engaged in the business of selling motor fuel at retail ... and who is not a licensed distributor or supplier ... [to] prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed by this Act if the distributor, supplier, or other reseller of motor fuel is registered.

May 28, 1999

Dear Xxxxx:

This General Information Letter, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter dated February 17, 1999, which was received by us on March 3, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 (b) and (c).

In your letter you have stated and made inquiry as follows:

Our company has a customer that has a resale certificate and they are buying diesel product from us and then reselling to a school. Currently, we are charging this customer prepaid sales tax. This customer files his sales tax return annually and has no taxable sales to which he can offset the PST-2 payments on his return. Your tax payer assistance division has indicated that the state will not issue a refund on sales tax returns unless the business is going out of business. Therefore, this customer can not get a refund on the prepaid tax.

We have spoken with PERSON1 and PERSON2 in your taxpayer assistance division on several occasions trying to come up with the proper way to handle this situation. They recommended that we write your legal division and ask for a ruling.

This customer is asking us to not charge him the prepaid tax, as he has no way to get it back or apply it against a sales tax payment.

Please advise us as to how we should handle this matter.

As we previously discussed, since your circumstances are fairly unusual, we strongly urge you to submit the information required to obtain a Private Letter Ruling, which is binding upon all parties. However, since we have not yet received such a request, we must respond to your inquiry with a General Information Letter.

Section 2d of the Retailers' Occupation Tax governs prepaid sales tax on retail sales of motor fuel. It states that

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[a]ny person engaged in the business of selling motor fuel at retail ... and who is not a licensed distributor or supplier ... shall prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed by this Act if the distributor, supplier, or other reseller of motor fuel is registered under Section 2a or Section 2c of this Act. See, 35 ILCS 120/2d (1996 State Bar Edition).

Your letter indicates that your customer is unique in that it makes no taxable sales, thereby incurring no Retailers' Occupation Tax liability. If this is the case, a credit for prepaid sales tax has little or no use, since there is no tax liability against which to apply the credit.

The provisions of Section 2d require prepayment of a portion of the tax due under the Retailers' Occupation Tax Act ("Act"). If circumstances are such that a supplier makes a sale of motor fuel to a purchaser that will never incur any Retailers' Occupation Tax liability on any of its sales, i.e., to a purchaser that is entirely a reseller under the Retailers' Occupation Tax Act, no tax is ever due under the Act. Consequently, we do not believe that prepayment is required under these limited circumstances. These circumstances are likely to be very rare. Again, because your inquiry is so unique, we urge you to obtain a Private Letter Ruling on this issue.

I hope that this information is helpful. If you have further questions, please feel free to contact the Department's Taxpayer Information Division at (217) 782-3336, or visit the Department's web site at <http://www.revenue.state.il.us>.

Very truly yours,

Jerilynn Troxell Gorden
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